

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 959 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE JAYANT PATEL**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
BHAGWATIBEN CHANDRAKANT PATEL & 2 - Defendant(s)

=====

Appearance :

MS LILU K BHAYA for Appellant(s) : 1,
MR DAXESH T DAVE for Defendant(s) : 1,
None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4
NOTICE SERVED for Defendant(s) : 2 - 3.

=====

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**Date : 04/05/2007****ORAL JUDGMENT**

1.The short facts of the case appears to be that

the deceased claimant while riding on bicycle near Swaminarayan temple in Dariapur, Ahmedabad, when was approaching to relief road opposite to Oriental building, one scooter bearing No.GJ-1-F-3627, dashed with the bicycle and as a result thereof, the deceased claimant sustained bodily injuries. The claim petition was filed by the deceased claimant before the Tribunal being MACP No. 134/91 for recovery of compensation of Rs.1 Lakh. The Tribunal after adjudication found the involvement of the vehicle and believed 10% disability and ultimately awarded compensation of Rs.44,000/- with interest @ 12% p.a. as per the Judgment and Award dated 07.08.1997 of the Tribunal. It is under these circumstances, the present appeal before this Court. Pending the present appeal claimant has expired, hence represented through legal heirs.

2. Heard Ms. Bhaya, learned counsel for the appellant, Mr. Dakshesh A. Dave for the legal heirs of the origl. claimant-respondent herein. Considered the Record & Proceedings of the Tribunal.

3. The first contention raised on behalf of the appellant is that the involvement of the vehicle was not proved and in furtherance to the submissions, it has been stated that there was no clear evidence, the eye witness did not depose the number of the scooter and also as to

whether the scooter was coming from front direction or backside and therefore, the Tribunal has committed error.

4. The examination of the said contention if considered with the record of the Tribunal, it appears that not only the deposition of the injured claimant was recorded, but the witness had also stated that one scooter had dashed that with the bicycle. Further, the police papers were also considered and the record of the criminal case was also considered and the Tribunal has arrived at the finding for involvement of the vehicle. Even if the evidence on record is re-appreciated, it cannot be said that the finding recorded by the Tribunal for involvement of the vehicle is unjust or that the Tribunal has committed any error on the said aspects and therefore, the said contention cannot be accepted.
5. The another contention raised on behalf of the claimant is on the aspect of disability and on the quantum of compensation inasmuch as, that the Doctor was not examined and that the papers of the injury were not produced and in absence of any proof of income of the claimant, the Tribunal has accepted the income on higher side. Therefore, there is error.
6. The examination of the said contention shows that in the record before the Tribunal, not only

the papers of treatment were produced, but the Certificate of the Doctor of Dariyapur Fracture and Orthopedic Hospital by Dr.J.B. Patel was produced. Together with the same, the receipt of the hospital for payment of the treatment were also produced. On the aspects of disability, the Tribunal has assessed at 10% and therefore, merely because the Doctor is not examined or that the Doctor certifying the disability is not examined, would not be sufficient to throw away the claim of disability. Further, as per the certificate on record of Dr. Mahesh A. Patel of Jay Orthopedic Hospital, disability is certified at 23.94% and the same is with the details of injuries sustained by the claimant and as against the certified disability of 23.94%, the claimant restricted to 10% and the Tribunal has accepted the same. Such an approach on the the part of the Tribunal cannot be said as unjust or unreasonable.

7. Even on the aspects of income, it did come on record that the claimant was partner in the partnership firm having 46% share. However, as there was no evidence on record of income tax return, the Tribunal has assessed the income of the claimant at Rs. 1,500/- per month for the purpose of deciding the compensation. As per the scheme of the Motor Vehicles Act, even for the person having no income, there is notional

consideration of the income at Rs. 15,000/- per year. As against the same, the assessment of 1,500/- per month for a cloth merchant aged 34 years cannot be said as unjust or unreasonable. The Tribunal therefore, accordingly based on the disability of 10%, has awarded the compensation. Hence, it cannot be said that any error is committed by the Tribunal as sought to be canvassed on behalf of the appellant.

8.No other contention is raised.

9.In the result, the appeal fails. Hence, dismissed. Decree accordingly. R & P be returned to the Tribunal.

10.In the result, the amount of compensation, if any lying, pending the appeal can be disbursed to the legal heirs of the deceased claimant. Hence, also ordered accordingly.

(JAYANT PATEL, J.)

*bjoy